



House of Representatives

General Assembly

File No. 387

February Session, 2006

Substitute House Bill No. 5205

House of Representatives, April 5, 2006

The Committee on Government Administration and Elections reported through REP. CARUSO of the 126th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING RECOVERY OF MISAPPROPRIATED STATE FUNDS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) For purposes of sections 1 to
2 4, inclusive, of this act:

3 (1) "Claim" means any request or demand for money or property
4 made (A) to a state official, state employee, state agent or any other
5 representative of the state, or (B) to a contractor, subcontractor, grantee
6 or other person if the state provides any portion of the money or
7 property requested or demanded, or if the state will reimburse directly
8 or indirectly such contractor, subcontractor, grantee or other person for
9 any portion of the money or property requested or demanded;

10 (2) "Knowing" and "knowingly" means when a person, with respect
11 to information, does any of the following: (A) Has actual knowledge of
12 the information, (B) acts in deliberate ignorance of the truth or falsity
13 of the information, or (C) acts in reckless disregard of the truth or

14 falsity of the information;

15 (3) "Original source" means an individual who has direct and
16 independent knowledge of information that the individual has
17 voluntarily provided to the Attorney General or the Auditors of Public
18 Accounts, without public disclosure, and upon which the Attorney
19 General has based an action brought pursuant to section 3 of this act;

20 (4) "Person" means any natural person, corporation, partnership,
21 association, trust or other business or legal entity; and

22 (5) "State" means any state agency in the executive, legislative or
23 judicial branch, and any quasi-public agency, as defined in section 1-
24 120 of the general statutes.

25 Sec. 2. (NEW) (*Effective from passage*) (a) A person defrauds the state
26 when such person:

27 (1) Knowingly presents, or causes to be presented, to any state
28 official or state employee a false or fraudulent claim;

29 (2) Knowingly makes, uses or causes to be made or used, a false
30 record or statement to obtain payment or approval of a claim by the
31 state;

32 (3) Conspires to defraud the state through the allowance or payment
33 of a false or fraudulent claim;

34 (4) Pursuant to a certificate or receipt, has possession, custody or
35 control of property or money used, or to be used, by the state and
36 knowingly delivers, or causes to be delivered, to the state less property
37 than the amount indicated on such certificate or receipt with the intent
38 to knowingly conceal the property;

39 (5) Is authorized to make or deliver a document certifying receipt of
40 property used, or to be used, by the state and, with the intent to
41 deceive the state, knowingly makes or delivers the receipt without
42 verifying that the information on the receipt is true;

43 (6) Buys, or receives as a pledge of an obligation or debt, public
44 property from an official or employee of the state knowing that such
45 official or employee may not lawfully sell or pledge the property;

46 (7) Enters into an agreement, contract or understanding with an
47 official or employee of the state knowing the information contained in
48 such agreement, contract or understanding is false;

49 (8) Knowingly makes, uses or causes to be made or used a false
50 record or statement to conceal, avoid or decrease an obligation to pay
51 or transmit money or property to the state; or

52 (9) Is a beneficiary of an inadvertent submission of a false claim to
53 the state and subsequently discovers the falsity of the claim but
54 knowingly fails to disclose the false claim to the state within a
55 reasonable time after discovery of the falsity of the claim.

56 (b) This section shall not be construed to apply to an act that would
57 constitute workers' compensation fraud pursuant to section 31-290c of
58 the general statutes, an act that violates any provision of title 12 of the
59 general statutes or an act where the alleged loss to the state is less than
60 twenty-five thousand dollars.

61 Sec. 3. (NEW) (*Effective from passage*) (a) Whenever the Attorney
62 General has reason to believe that a person may have defrauded the
63 state, pursuant to section 2 of this act, the Attorney General may
64 investigate such act and bring a civil action in the Superior Court
65 against such person to recover civil penalties and damages as provided
66 in this section and to obtain such equitable relief as the court deems
67 appropriate.

68 (b) Proof that a person has acted with the specific intent to defraud
69 the state shall not be required for a finding that such person has
70 defrauded the state pursuant to section 2 of this act. Innocent mistake
71 shall be an affirmative defense to any action brought pursuant to this
72 section. The state shall prove all essential elements of such cause of
73 action, including damages, by a preponderance of the evidence. A

74 corporation, limited liability corporation, partnership or other person
75 shall be liable to the state for the acts of its agent where the agent acted
76 with apparent authority to defraud the state pursuant to section 2 of
77 this act.

78 (c) Any person who is found by the court to have defrauded the
79 state pursuant to section 2 of this act shall be liable to the state for (1)
80 three times the amount of damages that the state sustained due to the
81 fraudulent act, (2) a civil penalty of not less than five thousand dollars
82 and not more than ten thousand dollars for each act that constitutes
83 defrauding the state pursuant to section 2 of this act, and (3)
84 reasonable attorney's fees and costs.

85 (d) Notwithstanding the provisions of subsection (c) of this section,
86 the court may, within its discretion, reduce an award of damages to the
87 state upon finding that a person has defrauded the state pursuant to
88 section 2 of this act, provided such award includes an award for the
89 consequential damages the state sustained as a result of the
90 defendant's violation. The court may, within its discretion, decide not
91 to impose a civil penalty against such defendant provided the court
92 finds each of the following:

93 (1) The defendant committing the violation provided the Attorney
94 General with all the information known to such person about the
95 defrauding of the state not later than thirty days after the date on
96 which the person first obtained the information;

97 (2) The defendant fully cooperated with any state investigation of
98 such defrauding; and

99 (3) At the time such defendant provided the Attorney General with
100 such information, no criminal prosecution, civil action or
101 administrative action had commenced with respect to the defrauding
102 of the state, and the defendant did not have actual knowledge of the
103 existence of an investigation into the defrauding of the state.

104 Sec. 4. (NEW) (*Effective from passage*) (a) The court shall approve any

105 settlement of an action brought under section 3 of this act. In
106 approving a settlement of, or rendering a judgment in, an action
107 brought under section 3 of this act, the court, upon application by the
108 Attorney General, may award to an original source not more than five
109 per cent of the award of actual damages paid to the state, taking into
110 consideration the significance of the information provided by the
111 original source to the court's finding of a defrauding of the state
112 pursuant to section 2 of this act or the settlement of the action.

113 (b) Notwithstanding the provisions of subsection (a) of this section,
114 an original source is not entitled to receive a portion of any court
115 judgment or settlement if: (1) The action brought pursuant to section 3
116 of this act is based on allegations or transactions that are the subject of
117 another criminal, civil, administrative or legislative proceeding; (2) the
118 information provided by the original source is based on the public
119 disclosure of allegations or transactions in a criminal, civil,
120 administrative or legislative proceeding or hearing or from the news
121 media; (3) the original source is an individual who is or was employed
122 by the state whose scope of employment includes investigating or
123 prosecuting fraud against the state and the information was gathered
124 in the course of such employment; or (4) the original source planned,
125 initiated or knowingly participated in the defrauding of the state.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>from passage</i>	New section

Statement of Legislative Commissioners:

In sections 3 and 4, references to "a court of competent jurisdiction", "a court" and "Superior Court" were changed to "the court" for purposes of consistency and clarity.

GAE *Joint Favorable Subst.-LCO*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 07 \$	FY 08 \$
Attorney General	GF - Revenue Gain	Potential Significant	Potential Significant

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill permits the Office of the Attorney General (OAG) to expand the scope of its investigations into large public works contracts beyond any specific allegations or information transmitted by a whistleblower. The OAG could accommodate the bill's increased investigatory powers without requiring additional appropriations. The bill provides a financial incentive for individuals to voluntarily provide information concerning alleged fraud and establishes civil penalties for defrauding the state which include treble damages, attorney's fees and costs. The likelihood and regularity of future recoveries is uncertain, but could be significant (i.e., greater than \$100,000) in any given year.

The Out Years

State Impact:

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$	FY 11 \$
Attorney General	GF - Revenue Gain	Potential Significant	Potential Significant	Potential Significant

Note: GF=General Fund

Municipal Impact: None

OLR BILL ANALYSIS
HB 5205***AN ACT CONCERNING RECOVERY OF MISAPPROPRIATED
STATE FUNDS.*****SUMMARY:**

This bill establishes a state false claims act. It authorizes the attorney general to investigate and sue in state court anyone he believes has defrauded the state by presenting a false claim. A "claim" is a request or demand for money or property from a (1) state official, employee, agent, or other representative or (2) contractor, subcontractor, grantee, or other person if the state provides at least part of the money or property or at least partially reimburses the person who provides it.

Since the law already authorizes the attorney general to recover state losses caused by fraud, the bill effectively specifies numerous instances in which a person, corporation, partnership, association, trust, or other business or legal entity (hereafter "person") is subjected to greater penalties for defrauding the state. Under the bill, a person found to have defrauded the state may be liable for damages, civil penalties, and other costs.

EFFECTIVE DATE: Upon passage

ACTION FOR FRAUD

Under the bill, the attorney general can investigate and bring an action for penalties, damages, and other equitable relief in Superior Court against anyone he believes may have defrauded the state. He must prove the state's case by a preponderance of the evidence.

A person may be liable for fraud even if he did not specifically intend to defraud the state; however, an innocent mistake is an

affirmative defense. Business entities are liable for the acts of their agents who act with apparent authority to defraud the state.

Penalties

A court may order anyone found to have defrauded the state to pay three times the amount of actual and consequential damages, the state sustained due to the fraudulent act; a \$5,000 to \$10,000 civil penalty for each act; and reasonable attorney's fees and costs. The court can reduce the amount of consequential damages to the state.

The court can also decide not to impose a civil penalty against anyone if it finds the defendant:

1. fully cooperated with the attorney general within 30 days after he first gained information about the state being defrauded;
2. provided the information before he had actual knowledge of any investigation into the defrauding of the state and before the start of any criminal prosecution, civil action, or administrative action regarding the fraud; and
3. fully cooperated with the state's investigation of the fraud.

The bill requires courts to approve any settlement in these cases

Judgments or Settlements

Upon the attorney general's request, a court may award an original source of information up to 5% of any actual damages paid to the state as part of any judgment or settlement. The actual percentage amount is dependent on the significance of the information the source provided. An "original source" is an individual who voluntarily gives the attorney general or state auditors information that is not publicly known and that the attorney general uses to bring an action against someone for defrauding the state.

An original source is not entitled to a portion of a judgment or settlement if (1) the action was not brought based on information the original source provided but rather on allegations or transactions that

are the subject of another criminal, civil, administrative, or legislative proceeding; (2) the information the original source provided is based on publicly disclosed allegations or transactions in a criminal, civil, administrative, or legislative proceeding or hearing or from the news media; (3) the original source is a current or former state employee whose job included investigating or prosecuting fraud against the state and the information was gathered in the course of his employment; or (4) the original source planned, initiated, or knowingly participated in defrauding the state.

FRAUDULENT ACTS

With some exceptions, a person defrauds the state under the bill when he:

1. knowingly presents, or causes to be presented, a false or fraudulent claim to any state official or employee;
2. knowingly makes, uses, or causes to be made or used, a false record or statement to get the state to pay or approve a claim;
3. conspires to defraud the state by allowing or paying a false or fraudulent claim;
4. pursuant to a certificate or receipt, possesses or controls property or money the state used or will use and knowingly delivers, or causes to be delivered, to the state less property than the amount indicated on the certificate or receipt with the intent to knowingly conceal the property;
5. is authorized to make or deliver a receipt of property used, or to be used, by the state and, intending to deceive the state, knowingly makes or delivers the receipt without verifying that the information on it is true;
6. buys, or receives as a pledge of an obligation or debt, public property from a state official or employee knowing that the official or employee may not lawfully sell or pledge the

property;

7. enters into an agreement, contract, or understanding with a state official or employee knowing the information contained in document is false;
8. knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state; or
9. is a beneficiary of an inadvertent submission of a false claim to the state and subsequently discovers the mistake but knowingly fails to disclose it to the state within a reasonable time after discovery.

Workers' compensation fraud; tax violations, including tax fraud; and losses to the state of less than \$25,000 do not constitute fraud or a false claim under the bill.

Under the bill, a person acts knowingly when he has actual knowledge of information or acts in deliberate ignorance or reckless disregard of the truth or falsity of the information..

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable

Yea 18 Nay 0 (03/17/2006)